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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANASTASIA HELENE KIRKEBY,  
Plaintiff,

vs.

LARRY BURNS aka LAWRENCE F.  
BURZYNSKI, et al.,  
Defendants.

CASE NO. 14-CV-2883-BEN (NLS)

**ORDER:**

**(1) GRANTING MOTION TO  
DISMISS FOR LACK OF  
JURISDICTION**

**(2) DENYING MOTION TO  
DISMISS FOR FAILURE TO  
STATE A CLAIM AS MOOT**

**(3) GRANTING PLAINTIFF  
LEAVE TO FILE SECOND  
AMENDED COMPLAINT**

[Docket Nos. 18, 26, 30]

Before this Court is a Motion to Dismiss for Lack of Jurisdiction, filed by Defendants JP Morgan Chase Bank, N.A., and California Reconveyance Company. (Docket No. 26.)

**BACKGROUND**

On December 5, 2014, Mrs. Kirkeby brought this action asserting multiple claims against five defendants. (Docket No. 1.) On January 12, 2015, Plaintiff Anastasia Kirkeby filed a First Amended Complaint asserting seven state law claims: (1) violation of California Penal Code § 529, (2) California Civil Code § 3426, (3) California Penal Code § 502, (4) breach of the duty of loyalty and aiding and abetting breach of fiduciary duty, (5) conversion, (6) intentional interference

1 with a contract, (7) California Business and Professions Code § 17200. Mrs.  
 2 Kirkeby's First Amended Complaint removed three defendants and added three new  
 3 defendants. She also added her husband, Glenn Kirkeby, as a co-plaintiff.

## 4 DISCUSSION

### 5 I. Defendants' Motion to Dismiss for Lack of Jurisdiction

6 Defendants JP Morgan Chase Bank, N.A., and California Reconveyance  
 7 Company argue this Court lacks subject matter jurisdiction over Plaintiff's case.  
 8 Plaintiff filed an Opposition.

#### 9 A. Federal Question Jurisdiction

10 District courts have original jurisdiction over civil actions arising "under the  
 11 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

12 Plaintiff's First Amended Complaint alleges that Defendants violated seven  
 13 California state laws.<sup>1</sup> Because the Complaint alleges no federal claims, this Court  
 14 does not have federal question jurisdiction over this matter.

#### 15 B. Diversity Jurisdiction

16 District courts have original jurisdiction over civil actions where (1) the  
 17 amount in controversy exceeds \$75,000, and (2) there is complete diversity of  
 18 citizenship. 28 U.S.C. § 1332(a). Complete diversity of citizenship exists where no  
 19 plaintiff is from the same state as any Defendant. *Abrego Abrego v. Dow Chem.*  
 20 *Co.*, 443 F.3d 676, 679 (9th Cir. 2006) (citing *Exxon Mobil Corp. v. Allapattah*  
 21 *Servs., Inc.*, 545 U.S. 546 (2005)).

22 Complete diversity does not exist here. Plaintiff alleges that she and her  
 23 husband are citizens of California. She alleges that Defendant Larry Burns or  
 24 Lawrence Burzynski is also a citizen of California. Because at least one plaintiff is

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26 <sup>1</sup>Plaintiff briefly mentions a criminal statute, 18 U.S.C. § 1001, in attempt to  
 27 support her claim that Defendants violated California Penal Code § 529. (FAC 19.)  
 28 Section 1001 is a criminal statute which provides no private right of action. *Willem's*  
*v. Apartment Inv. & Mgmt. Co.*, 72 F. App'x 700, 701 (9th Cir. 2003). In the event this  
 mention of section 1001 should be construed as a claim against Defendants, the claim  
 is dismissed with prejudice.

1 a citizen of the same state of at least one defendant, this Court does not have  
2 diversity jurisdiction over this case.

3 Plaintiff failed to establish this Court has subject matter jurisdiction over this  
4 action. The Court therefore **GRANTS** Defendants' Motion to Dismiss for Lack of  
5 Jurisdiction.

## 6 **II. Plaintiff's Motion for Leave to Amend**

7 On February 19, 2015, Plaintiff filed an Ex Parte Motion for Leave to File a  
8 Second Amended Complaint. (Docket No. 30.) Defendants filed an Opposition.

9 Pursuant to Federal Rule of Civil Procedure 15, courts "should freely give  
10 leave when justice so requires."

11 Plaintiff contends that a second amended complaint will enable her to show  
12 that this Court has subject matter jurisdiction over this matter. She also claims that  
13 "newly discovered evidence" necessitates addition of new claims and the identity of  
14 doe defendants.

15 Plaintiff's Motion for Leave to Amend is **GRANTED**. Plaintiff may add Mr.  
16 Kirkeby as co-plaintiff and new claims against Defendants. However, Plaintiff must  
17 take care to cure the deficiencies pointed out in this Court's order. The Court also  
18 cautions Plaintiff to make her best effort to include all possible claims against all  
19 defendants in the Second Amended Complaint.

20 Further, as the Court has stated in previous orders, Plaintiff has provided no  
21 reason to file motions without giving notice to Defendants. Any future ex parte  
22 motions from Plaintiff will not be accepted.


## 23 **CONCLUSION**

24 Finding this Court lacks subject matter jurisdiction to hear this action,  
25 Defendants' Motion to Dismiss for Lack of Jurisdiction is **GRANTED**. Plaintiff's  
26 Motion to file a Second Amended Complaint is **GRANTED**. If Plaintiff believes  
27 she can cure the deficiencies in the previous complaints, Plaintiff is **ORDERED** to  
28 file any Second Amended Complaint on or before **April 15, 2015**. Finally,

1 Defendants' Motion to Dismiss for failure to state a claim (Docket No. 18) is  
2 **DENIED as moot.** The action is **DISMISSED** without prejudice. The Clerk may  
3 close the case.

4 **IT IS SO ORDERED.**

5  
6 Dated: March 5, 2015

  
HON. ROGER T. BENITEZ  
United States District Judge